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IN THE
COURT OF APPEALS OF INDIANA

RONNIE PRINGLE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0609-CR-834
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Tanya Walton Pratt, Judge
Cause No. 49G01-0504-FA-68334

August 7, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Ronnie Pringle appeals from his convictions of two counts of child molesting, as Class A felonies, two counts of child molesting, as Class C felonies, and his adjudication as an habitual offender. Pringle asserts that he received ineffective assistance of trial counsel because his counsel failed to communicate a deadline to accept a guilty plea offer and failed to ensure a defense witness follow the trial court's separation of witnesses order. He also asserts that the trial court abused its discretion in finding him competent to stand trial. We conclude that Pringle did not receive ineffective assistance of counsel, and that the trial court did not abuse its discretion in finding him competent to stand trial. Further, we conclude Pringle was incorrectly sentenced, and remand to the trial court for resentencing.

Facts and Procedural History

Between February 14 and April 23, 2005, Pringle picked up thirteen-year-old A.W. and her mother, and drove them to a Days Inn in Marion County. While the mother was asleep in the room, Pringle removed his and A.W.'s clothing and inserted his penis into A.W.'s vagina, hurting her "inside" her vagina. Transcript at 48. Pringle also fondled A.W.'s breasts. He told A.W. that he would kill her and her mother if she told anyone what had happened.

On April 23, 2005, Pringle again picked up the mother and daughter and drove them to a Super 8 Motel in Marion County. Pringle again removed his and A.W.'s clothing and inserted his penis into her vagina. A.W. saw "white stuff" come out of his penis. Tr. at 43. The mother emerged from the restroom and saw Pringle on top of her daughter. Pringle kept

the two in the room for approximately six hours, threatening to kill them.

When Pringle returned A.W. and her mother home, the mother told her sister what had happened and the sister contacted the police. The State charged Pringle with two counts of child molesting, as Class A felonies, and two counts of child molesting, as Class C felonies, and alleged that he was an habitual offender.

On Monday, August 14, 2006, the morning of the jury trial, defense counsel informed the trial court that Pringle wanted to accept a plea offer previously tendered by the State, but the State was no longer offering it. The court determined that the plea was "off the table," that the State was ready for trial, and directed defense counsel that the trial would proceed that day.

Defense counsel then moved to have Pringle declared incompetent to stand trial, stating that Pringle lacked the capacity to assist in his defense and requesting a medical evaluation of Pringle. The trial court questioned Pringle and found him competent to stand trial.

During trial, Pringle expressed a desire to call his sister as a witness. When defense counsel later attempted to call her to the stand, the trial court refused to allow him to do so because she had violated a separation of witnesses order.

The jury found Pringle guilty. The trial court then found Pringle to be an habitual offender. The trial court found Pringle's criminal record to be an aggravating circumstance, and found a prior brain injury to be a mitigating circumstance. The trial court sentenced Pringle to forty years of incarceration for each Class A felony child molesting conviction,

eight years for each Class C felony child molesting conviction, enhanced one Class A sentence by thirty years for being an habitual offender, and ordered that all sentences by served concurrently, for an aggregate sentence of seventy years of incarceration. Pringle now appeals.

Discussion and Decision

I. Ineffective Assistance of Counsel

Pringle asserts his defense counsel rendered ineffective assistance because he failed to communicate the deadline attached to the plea offer and failed to ensure a defense witness follow the trial court's separation of witnesses order.

A. Standard of Review

When reviewing a claim of ineffective assistance of counsel this court starts with a strong presumption that counsel rendered adequate legal assistance. Stevens v. State, 701 N.E.2d 277, 281 (Ind. Ct. App. 1998). The burden is upon the defendant to rebut this presumption with strong and convincing evidence. Id. In order to prevail, the defendant must show first that counsel's representation was deficient, and second that the deficient performance so prejudiced the defendant as to deprive him of a fair trial. Id. (citing Strickland v. Washington, 466 U.S. 668, 687 (1984)). "A defendant is denied a fair trial only when a conviction occurs as the result of a breakdown in the adversarial process rendering the trial result unreliable." Id. (citing Potter v. State, 684 N.E.2d 1127, 1131 (Ind. 1997)). A trial result is deemed unreliable where defendant shows "a reasonable probability that, but for counsel's unprofessional errors, the result would have been different." Id.

B. Guilty Plea Offer

On the morning of trial, defense counsel Tom Gaunt informed the trial court that Pringle wanted to accept a tendered plea offer,[1] stating:

> MR. GAUNT: Judge we want – we wanted to do a plea on Friday. I got a call from Kimberly Clark on Friday about mid day, and I was bogged down then, but I – I said – let me go over to the Jail, because he signed the Plea. I believe he wanted to take the Plea, but he told the Judge on the record at the last hearing, that he needed to talk to his family.
>
> THE COURT: So does he – is he taking a plea – yes or no…
>
> MR. GAUNT: He wants to take the Plea, Judge, but she's not offering it. She's not extending it…
>
> MS. CLARK: I told him that the last time…
>
> MR. GAUNT: And she said Friday – she wasn't going to extend it, and I – that's…
>
> THE COURT: All right – so the Plea is off the table?
>
> MS. CLARK: Yes, Your Honor. We're ready for trial today.
>
> THE COURT: Okay – all right, well, we'll go to trial. Unfortunately – you can't play games with them – Mr. Gaunt. I'm sorry – Mr. Pringle. You've had many opportunities to plead guilty, and you didn't want to take the offer, and it's off the table now.

Transcript at 5.

Pringle now asserts his defense counsel rendered ineffective assistance by failing to communicate the State's plea offer in a timely manner. Pringle asserts that a deadline was

[1] No written plea offer is included with the materials submitted to this court on appeal. However, defense counsel stated, during sentencing, that he was reading from the plea offer and that the plea agreement would have provided that Pringle receive a forty-three year sentence with thirteen years suspended to sex offender probation. Tr. at 244.

given for acceptance of the tendered plea offer, but defense counsel failed to communicate it by the deadline, and the tendered plea was subsequently "off the table."

The State disputes that it had a deadline for acceptance of the plea offer. The State maintains there is no evidence in the record that the prosecutor communicated a deadline for acceptance of the plea offer.

This argument is disingenuous. The transcript clearly shows that when Pringle's trial counsel tried to convey Pringle's acceptance of the State's plea offer, the State refused to extend it. As the State refused to extend the plea offer, it clearly did have a deadline for Pringle's acceptance. The State's argument on appeal is inconsistent with its prior position at trial.

However, this alone will not support Pringle's claim of ineffective assistance of counsel. Pringle argues trial counsel failed to inform him of the deadline, and had he known of the deadline there would have been a different result. However, Pringle's mere assertion that he would have accepted the plea offer had he known of the deadline is self-serving in light of the fact Pringle maintained his innocence.

The transcript shows Pringle stated at sentencing that A.W.'s mother had set him up, and that A.W. had seduced him with her mother's consent. The trial court stated that Pringle had rejected the State's plea offer because he maintained his innocence, and noted that "if you maintain your innocence, you can't plead guilty." Tr. at 244. As Pringle maintained his belief in his innocence, acceptance of a guilty plea would have been error by the trial court.

Mayberry v. State, 542 N.E.2d 1359, 1360 (Ind. Ct. App. 1989), trans. denied ("[A] judge may not accept a plea of guilty when the defendant both pleads guilty and maintains his innocence at the same time. To accept such a plea constitutes reversible error.").

While trial counsel may have failed to relate the deadline for Pringle's acceptance of the tendered plea offer, the trial court could not have accepted any such plea from Pringle because Pringle maintained his innocence. Thus, Pringle cannot show that the result would have been different and has not shown counsel performed below the standard set out in Strickland.

C. Preservation of Testimony

Pringle also asserts his defense counsel rendered ineffective assistance by failing to ensure that a defense witness follow the trial court's separation of witnesses order. Pringle wanted to call his sister, Connie Unrue, to rebut testimony by the State's witnesses. The trial court refused to allow Unrue's testimony because she had remained in the courtroom during some of the testimony. In his offer to prove, defense counsel indicated that Unrue would have testified that, contrary to the testimony that Pringle had kept the mother and A.W. in the Super 8 Motel room for six hours, he had actually left for some time to go to a bar. Tr. at 185. Pringle states this testimony would have called into question the mother's credibility.

However, no prejudice to Pringle resulted from defense counsel's failure to take measures to allow Unrue to testify. Given that A.W. testified that Pringle twice had sexual intercourse with her, and DNA evidence taken from her matched Pringle's profile to a high degree of certainty, tr. at 173, Unrue's testimony would not have called into question any

element of the crimes with which Pringle was charged. As Pringle has not shown how the absence of Unrue's testimony resulted in any prejudice, we cannot say the defense counsel rendered ineffective assistance.

II. Competence to Stand Trial

Pringle contends that the trial court should have appointed mental health professionals to evaluate him and that it should have conducted a hearing into his competence to stand trial.

A. Standard of Review

The determination of whether reasonable grounds exist to order an evaluation of competency is within the trial court's discretion. We review only for an abuse of that discretion. Campbell v. State, 732 N.E.2d 197, 202 (Ind. Ct. App. 2000) (citing Anthony v. State, 540 N.E.2d 602, 606 (Ind. 1989)).

B. Pringle's Competency

Defense counsel raised the issue of Pringle's competence prior to trial, stating that Pringle lacked the capacity to assist in his defense and suggesting the appointment of a psychologist or psychiatrist to evaluate Pringle. The trial court then questioned Pringle as follows:

> THE COURT: Do you know what the Judge does in a trial?
>
> PRINGLE: They're the ones that decides…
>
> THE COURT: Right…and do you know the role of your lawyer – what's your lawyer's job…
>
> PRINGLE: To argue with the – the victims and whatever…
>
> THE COURT: Okay – and what's the prosecutor's job…

PRINGLE: The same thing….
***
THE COURT: ….did you hire Mr. Gaunt to be your lawyer – or your family hired him?

PRINGLE: My sister did…

Tr. at 9-10. The court determined Pringle was competent to stand trial.

Pringle argues the trial court should have ordered a medical evaluation and appointed mental health experts to make a reasoned determination as to whether he was competent. Pringle complains that the trial court abused its discretion in not setting a time for a hearing and by conducting an inadequate inquiry into his mental status in order to determine whether he had the ability to understand the proceedings and assist in the preparation of a defense.

The right to a competency hearing is not absolute. Campbell, 732 N.E.2d at 202. Indiana Code section 35-36-3-1 requires a competency hearing only where there is evidence before the trial court creating a reasonable and bona fide doubt as to the defendant's competency, which is defined as whether a defendant currently possesses the ability to consult rationally with counsel and factually understand the proceedings against him. Id. A trial judge's observations of a defendant in court are an adequate basis for determining whether a competency hearing is necessary. Id. When the circumstances do not indicate that a trial court should sua sponte order a competency hearing, the defendant has the burden of establishing that reasonable grounds for such a hearing exist. Id.

Pringle assisted in the preparation of his defense inasmuch as he suggested Unrue as a witness prior to trial. Pringle answered appropriately when asked if he understood what a

jury trial consisted of, and if he understood the role of the trial court in a bench trial and the roles of the attorneys. Thus, the record indicates Pringle had a rational and factual understanding of the proceedings. The record does not show Pringle failed to appreciate the charges against him or what was at stake. We see no basis for reversing the trial court's determination that there was no reasonable or bona fide doubt as to Pringle's competency.

III. Sentencing

We note sua sponte that Pringle was convicted of two separate counts of child molesting, as Class A felonies, and two separate counts of child molesting, as Class C felonies. The transcript shows that A.W. testified at trial that on the first occasion, at the Days Inn, Pringle removed his and A.W.'s clothing and inserted his penis into her vagina. He also fondled her breasts. The evidence at trial also shows that on the second occasion, at the Super 8 Motel, Pringle removed his and her clothing and inserted his penis into her vagina. When asked at trial "when he touched your breasts with his hand, … did that happen in the Days Inn or at the Super…," A.W. responded that it only occurred in the Days Inn. Tr. at 49. However, in closing argument and at sentencing, the State said that the victim testified that Pringle touched her breasts in two different hotels. Tr. at 196, 240-41. From this, we are unable to discern whether the conviction for the Class C felony charge relating to the incident at the Super 8 is based on the State's misstatements of fondling or whether it is based on the intercourse supporting the conviction for the Class A felony charge relating to the incident at the Super 8. Regardless, it appears Pringle was incorrectly sentenced for the Class C felony charge relating to the incident at the Super 8 and thus, the sentence for Count III must be

vacated.

Conclusion

Pringle did not receive ineffective assistance of counsel and was properly found competent to stand trial. Further, we remand the case so that the trial court can vacate Pringle's sentence for Count III and resentence Pringle accordingly.

Affirmed, and remanded for resentencing.

VAIDIK, J., concurs.

SULLIVAN, SR. J., concurs as to parts I(A), I(C), II and III, concurs in result as to part I(B).